

FILED
JUN 17 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal No. 08CR1816-BTM
Plaintiff,) FINDINGS AND RECOMMENDATION OF
v.) THE MAGISTRATE JUDGE UPON A
JAVIER MARTINEZ,) PLEA OF GUILTY WITH WAIVER OF
Defendant.) OBJECTIONS AND THE PREPARATION
) OF THE PRESENTENCE REPORT

Upon Defendant's request to enter a plea of Guilty pursuant to Rule 11 of the Federal Rules of Criminal Procedure, this matter was referred to the Magistrate Judge by the District Judge, with the written consents of the Defendant, counsel for the Defendant, and counsel for the United States.

Thereafter, the matter came on for a hearing on Defendant's plea of guilty, in full compliance with Rule 11, Federal Rules of Criminal Procedure, before the Magistrate Judge, in open court and on the record.

In consideration of that hearing and the allocution made by the Defendant under oath on the record and in the presence of counsel, and the remarks of the Assistant United States Attorney,

1 **I make the following FINDINGS - that the Defendant**
2 **understands:**

- 3 1. the right to persist in a plea of "not guilty";
- 4 2. the right to a speedy and public trial;
- 5 3. the right to be tried by a jury, or the ability to
6 waive that right and have a judge try the case without
7 a jury;
- 8 4. the right to the assistance of counsel at trial;
- 9 5. that, at trial, there would be the right to confront
10 and cross-examine the witnesses against the Defendant;
- 11 6. that, at trial, there is the right to present a
12 defense, and the right to have witnesses subpoenaed to
13 testify on the Defendant's behalf;
- 14 7. that, at trial, the Defendant would have the right
15 against compelled self-incrimination;
- 16 8. the nature of the charge filed in this case;
- 17 9. the maximum possible sentence that could be imposed
18 (including imprisonment, fine, term of supervised
19 release, and mandatory special assessment), the effect
20 of a supervised release term, and that the sentencing
21 guidelines are only advisory so that the Court may
22 sentence Defendant up to the statutory maximum;
- 23 10. the terms of the plea agreement;

24 **I further find that:**

- 25 11. that Defendant's plea of guilty is made knowingly and
26 voluntarily;
- 27 12. the Defendant is competent to enter a plea; and
- 28 13. there is a factual basis for Defendant's plea.

1 **I therefore RECOMMEND that the District Judge accept the**
2 **Defendant's plea of guilty.**

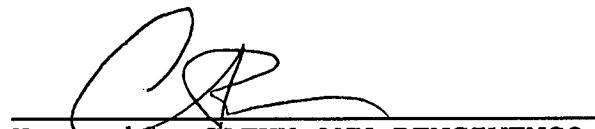
3 The sentencing hearing will be before United States District
4 **Judge BARRY T. MOSKOWITZ, on JULY 25, 2008, at 2:30 P.M.**

5 Objections to these Findings and Recommendation were waived
6 by the parties at the hearing. The parties have also waived the
7 preparation of the Presentence report in this case.

8

9

10 Dated: JUNE 17, 2008



11 _____
12 Honorable CATHY ANN BENCIVENGO
13 United States Magistrate Judge

14 Copies to:

15 Hon. BARRY T. MOSKOWITZ
16 U.S. District Judge

17 CARLOS CANTU
18 United States Attorney

19 STEPHEN WHITE
20 Counsel for Defendant

21

22

23

24

25

26

27

28